Judicial Meetings with Children in Australian Family Law Proceedings:

Hearing Children's Voices

by

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Declarations

Declaration of Originality

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Statement of Ethical Conduct

The research associated with this thesis abides by all international and Australian codes on human and animal experimentation. Research conducted under this study received approval from the Human Research Ethics Committee (Tasmania) Network which is constituted under the National Health and Medical Research Council.

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Abstract

Australian family law judicial officers rarely take the opportunity to meet with children who are the subject of proceedings, despite the fact that the outcome of these proceedings will affect many important aspects of a child's life. This appears to be at odds with the court's obligation to regard the best interests of the child as the paramount consideration and the child's right to participate pursuant to the *United Nations Convention on the Rights of the Child*. While it appears that the practice of judicial meetings with children is not encouraged in Australia, internationally there is growing support. Several countries have implemented guidelines or taken other steps to actively encourage greater use of the practice. In some countries, judicial meetings are carried out frequently, uncontroversially and successfully. Delegates at the 5th World Congress on Family Law and Children's Rights in 2009 passed a resolution in support of judges considering whether to meet with a child in every case before them.

This thesis looks at the benefits that can be gained, both for children and for decision-making, by judges meeting with children. These benefits are viewed within the wider context of how the right of children to express their views is exercised in family law matters and the literature on how children feel about their current level of participation in court proceedings. In determining what is in the best interests of a child, judges may be aided by a practice that enables them to learn more about a child's needs and interests than via other recognised methods of hearing children's views.

The thesis explores the reasons why there are only a handful of cases in which Australian judges have met with children and discusses the main criticisms of the practice. The author conducted a unique empirical study to discover the views and experiences of the Australian family law judiciary about meeting with children. Utilising both qualitative and quantitative methods, the study involved in-depth interviews with four Family Court judges and a survey of all family law judicial officers in Australia. The results of the study make an original contribution to the field of judicial attitudes to children's participation in family law. It was discovered that some problems discussed in the literature, such as due process and confidentiality, may be more perceived than real as judges were able to suggest ways to overcome them. The study found that many judges see strong benefits in meeting

with children, but that they may be unable to overcome two lingering concerns. Judges perceive that they lack the skills and training to meet with children, and they are troubled by the prospect that judicial meetings may subject children to parental pressure or manipulation.

The thesis makes recommendations to ensure greater certainty in the practice of judicial meetings with children. These include the implementation of Australian guidelines on when and how judicial meetings should be conducted. With recent child-focused changes to family law and practice, such as the Less Adversarial Trial procedure, and growing international discussion, it is anticipated that judicial culture may slowly change. With time, judges may consider the potential benefits of meeting with a child in every case that comes before them. It is argued that it is imperative they do so in order to give effect to the internationally recognised rights of children and the fundamental obligation of the family law courts to regard the best interests of the child as the paramount consideration.

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My late father Dr Patrick Fernando AM, child and adolescent psychiatrist, was a helper of families in crisis, a fighter for the rights of children, a great believer in the value of higher education, and a fantastic dad. This thesis is dedicated to his memory.

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